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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 KEVIN JAMES WILSON,

No. C-92-3181 TEH (PR)

12 Petitioner,

ORDER TO SHOW CAUSE

13 v.

14 CHARLES D. MARSHALL, Warden,

15 Respondent.  
16 \_\_\_\_\_/

17 In 1992, Petitioner filed a prisoner complaint which the  
18 Court construed as a petition for a writ of habeas corpus under 28  
19 U.S.C. § 2254. Doc. #2. The Court dismissed the complaint with  
20 leave to amend and file a first amended petition for a writ of  
21 habeas corpus within 30 days. Id. Petitioner obtained an extension  
22 of time to file an amended petition by no later than October 26,  
23 1992. Doc. #4. On October 30, 1992, the Court noted that  
24 Petitioner had not filed an amended petition within the designated  
25 time and dismissed the case without prejudice. Doc. #5. On  
26 December 15, 1992, after the case was closed, Petitioner filed a  
27 first amended petition. Doc. #7.  
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1           However, it appears that the Court received a letter from  
2           Petitioner on November 8, 1992, which was not docketed in the  
3           above-captioned case. In response to that letter, on November 18,  
4           1992, the Court informed Petitioner that no amended petition had  
5           been received and ordered Petitioner to file an amended petition by  
6           December 18, 1992. The Court's November 18, 1992 letter was not  
7           docketed in the above-captioned case. Accordingly, when the amended  
8           petition was filed on December 15, 1992, no action was taken since  
9           the case had been closed on October 30, 1992.

10           More than ten years later, on January 12, 2005, Petitioner  
11           requested that the Court take action on the first amended petition.  
12           Doc. #10. He claimed that the amended petition was timely filed  
13           pursuant to the extension of time he received from the Court in the  
14           Court's letter dated November 18, 1992. The Court denied  
15           Petitioner's request for action on his first amended petition  
16           without addressing whether the amended petition was timely filed.  
17           The Court instead noted that Petitioner had stated in the body of  
18           his habeas petition that the grounds for relief raised therein "were  
19           never previously presented" to the state courts. Accordingly, on  
20           July 27, 2005, the Court dismissed the petition without prejudice to  
21           refiling after state judicial remedies are exhausted. Doc. #12.

22           Over four years after that order of dismissal, Petitioner  
23           has filed a request to reopen this case, stating that he has  
24           exhausted his state court remedies. Doc. #13. According to  
25           Petitioner's motion to reopen, the California Supreme Court denied  
26           his habeas petition on June 14, 2006. Petitioner's request to  
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1 D. Marshall, the former Warden at Pelican Bay State Prison. See  
2 Fed. R. Civ. P. 25(d). Failure to name the proper custodian, which  
3 here is Warden Lewis, the sole person who can produce "the body" of  
4 the petitioner at this time, deprives federal courts of personal  
5 jurisdiction. Ortiz-Sandoval v. Gomez, 81 F.3d 891, 896 (9th Cir.  
6 1996). Accordingly, the Clerk shall substitute Greg Lewis as the  
7 respondent in this action.

8 II

9 For the foregoing reasons and for good cause shown,

10 1. The Clerk is directed to re-open this case and to  
11 serve by certified mail a copy of this Order and the first amended  
12 Petition, and all attachments thereto (i.e., Doc. #7), on Respondent  
13 and Respondent's attorney, the Attorney General of the State of  
14 California. The Clerk also shall serve a copy of this Order on  
15 Petitioner.

16 2. Respondent shall file with the Court and serve on  
17 Petitioner, within sixty (60) days of the issuance of this Order, an  
18 Answer conforming in all respects to Rule 5 of the Rules Governing  
19 Section 2254 Cases, showing cause why a writ of habeas corpus should  
20 not be granted. Respondent shall file with the Answer and serve on  
21 Petitioner a copy of all portions of the state trial record that  
22 have been transcribed previously and that are relevant to a  
23 determination of the issues presented by the Petition.


24 If Petitioner wishes to respond to the Answer, he shall do  
25 so by filing a Traverse with the Court and serving it on Respondent  
26 within thirty (30) days of his receipt of the Answer.

1           3.     In lieu of an Answer, Respondent may file a Motion to  
2 Dismiss on procedural grounds, as set forth in the Advisory  
3 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.  
4 If Respondent files such a motion, Petitioner shall file with the  
5 Court and serve on Respondent an Opposition or Statement of  
6 Non-Opposition within thirty (30) days of receipt of the motion, and  
7 Respondent shall file with the Court and serve on Petitioner a Reply  
8 within fifteen (15) days of receipt of any Opposition.

9           4.     Petitioner is reminded that all communications with  
10 the Court must be served on Respondent by mailing a true copy of the  
11 document to Respondent's counsel. Petitioner also must keep the  
12 Court and all parties informed of any change of address.

13           IT IS SO ORDERED.

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15 DATED       04/16/2012

  
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THELTON E. HENDERSON  
United States District Judge

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